

Date signed November 16, 2009



Paul Mannes

PAUL MANNES
U. S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt**

IN RE:	:	
	:	
CLOVERLEAF ENTERPRISES, INC.	:	Case No. 09-20056PM
	:	Chapter 11
Debtor	:	
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MEMORANDUM OF DECISION

Before the court is the Amended Motion of the Debtor-in-Possession for authorization to employ the law firm of Semmes Bowen & Semmes, the law firm of J. William Pitcher, and the firm of G. S. Proctor & Associates, Inc., to perform lobbying services. The Motion is opposed by the Maryland Thoroughbred Horsemen's Association, Inc., and the Maryland Horse Breeders Association, Inc., on the grounds that these firms fail to meet the disinterested standard by virtue of receiving potentially avoidable payments, contrary to the verified schedules filed in the case. G. S. Proctor & Associates, Inc., and the law firm of Semmes Bowen & Semmes have claims against the estate. The court will allow the employment of the attorneys, but will disallow the motion to employ G. S. Proctor & Associates, Inc. ("Proctor").

11 U.S.C. § 327(e) provides:

11 U.S.C. § 327. Employment of professional persons

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

While there may well be a potential preference action against the attorneys, they will not be representing the estate with regard to any decision to pursue that cause of action. The requirement for approving the hiring of special counsel set forth in 11 U.S.C. § 327(e) is not violated by the receipt of a potential preference. *In re Servico, Inc.*, 149 B.R. 1009, 1013 (BC S.D. Fla. 1993). This estate is represented by extremely competent counsel, who are well able to evaluate the merits of any such preference claim. Neither Proctor nor either law firm is in a position to take any action to affect the prosecution of a potential preference claim, should it be in the estate's interest to file such.

In reviewing the opposition, the court is not unmindful of the motives of the objecting parties in their attempt to bar the hiring of the team of lobbyists for the Debtor. The real prize ring for this dispute between the Maryland thoroughbred interests and the Maryland standardbred interests is not so much in the Bankruptcy Court as it is before the Maryland Legislature. The opposition to this Motion would have the Debtor enter the prize ring with its hands tied behind its back, being unable to avail itself of the opportunity to use the services of its lobbying team. The entities sought to be hired do not have an interest that is materially adverse to the interests of the estate or of any class of creditors or equity security holders. This is the test for disinterestedness under 11 U.S.C. § 101(14).

The court finds that hiring of the attorneys does not collide with one of the per se rules that prevents employment of these parties. *See Harold & Williams Development Company v. United States Trustee*, 977 F.2d 906 (CA4 1992). Nor does the court find that this is one of those exceptional cases where it should interfere with the Debtor's choice of counsel. *See In re Smith*, 507 F.3d 64, 71 (CA2 2007).

An appropriate order will be entered.

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End of Memorandum